

REGULATION OF PUBLIC INSURANCE ADJUSTERS

CHAPTER 1178

S.B. No. 1060

AN ACT

relating to the regulation of public insurance adjusters.

Be it enacted by the Legislature of the State of Texas:

SECTION 1. Section 4102.051(a), Insurance Code, is amended to read as follows:

(a) A person may not act as a public insurance adjuster in this state or hold himself or herself out to be a public insurance adjuster in this state unless the person holds a license ~~[or certificate]~~ issued by the commissioner under Section 4102.053 ~~or~~ 4102.054; ~~or 4102.069~~.

SECTION 2. Sections 4102.066(a) and (b), Insurance Code, are amended to read as follows:

(a) The commissioner shall collect in advance the following nonrefundable fees:

(1) for a public insurance adjuster license, an application fee in an amount to be determined by rule by the commissioner;

(2) for a nonresident public insurance adjuster license, an application fee in an amount to be determined by rule by the commissioner; *and*

(3) for each public insurance adjuster examination, a fee in an amount to be determined by rule by the commissioner; ~~and~~

~~[(4) for a public insurance adjuster trainee certificate under Section 4102.069, a registration fee in an amount to be determined by rule by the commissioner].~~

(b) The amount of the fee for the renewal of a license ~~[or a certificate]~~ issued under this chapter shall be determined by rule by the commissioner.

SECTION 3. Section 4102.103, Insurance Code, is amended by adding Subsection (d) to read as follows:

(d) A license holder may not enter into a contract with an insured and collect a commission as provided by Section 4102.104 without the intent to actually perform the services customarily provided by a licensed public insurance adjuster for the insured.

SECTION 4. Section 4102.104(d), Insurance Code, is amended to read as follows:

(d) A public insurance adjuster may not accept any payment that violates *the provisions of this section* ~~[Subsection (e)]~~.

SECTION 5. Section 4102.158, Insurance Code, is amended by amending Subsection (a) and adding Subsections (d), (e), and (f) to read as follows:

(a) A license holder may not:

(1) participate directly or indirectly in the reconstruction, repair, or restoration of damaged property that is the subject of a claim adjusted by the license holder; or

(2) engage in any other activities that may reasonably be construed as presenting a conflict of interest, including soliciting or accepting any remuneration from, ~~[or]~~ having a financial interest in, *or deriving any direct or indirect financial benefit from*, any salvage firm, repair firm, *construction firm*, or other firm that obtains business in connection with any claim the license holder has a contract or agreement to adjust.

(d) A license holder may not directly or indirectly solicit, as described by Chapter 38, Penal Code, employment for an attorney or enter into a contract with an insured for the primary purpose of referring an insured to an attorney and without the intent to actually perform the services customarily provided by a licensed public insurance adjuster. This section may not be construed to prohibit a license holder from recommending a particular attorney to an insured.

(e) A license holder may not act on behalf of an attorney in having an insured sign an attorney representation agreement.

(f) *A license holder must become familiar with and at all times act in conformance with the criminal barratry statute set forth in Section 38.12, Penal Code.*

SECTION 6. Section 4102.160, Insurance Code, is amended to read as follows:

Sec. 4102.160. CERTAIN PAYMENTS PROHIBITED. A license holder may not:

- (1) advance money to any potential client or insured; or
- (2) pay, allow, or give, or offer to pay, allow, or give, directly or indirectly, to a person who is not a licensed public insurance adjuster a fee, commission, or other valuable consideration for the referral of an insured to the public insurance adjuster for purposes of [based on] the insured entering into a contract with that public insurance adjuster or for any other purpose[; or
- ~~[(3) otherwise offer to pay a fee, commission, or other valuable consideration exceeding \$100 to a person not licensed as a public insurance adjuster for referring an insured to the license holder].~~

SECTION 7. Subchapter D, Chapter 4102, Insurance Code, is amended by adding Section 4102.164 to read as follows:

Sec. 4102.164. ACCEPTANCE OF REFERRAL PAYMENTS PROHIBITED. (a) A licensed public insurance adjuster may not accept a fee, commission, or other valuable consideration of any nature, regardless of form or amount, in exchange for the referral by a licensed public insurance adjuster of an insured to any third-party individual or firm, including an attorney, appraiser, umpire, construction company, contractor, or salvage company.

(b) The commissioner shall adopt rules necessary to implement and enforce this section.

SECTION 8. Section 4102.069, Insurance Code, is repealed.

SECTION 9. The repeal by this Act of Section 4102.069, Insurance Code, does not affect the authority of a person to act under a temporary certificate issued by the Texas Department of Insurance under that section before the effective date of this Act.

SECTION 10. Sections 4102.103(d) and 4102.158(d), Insurance Code, as added by this Act, apply only to a contract entered into or solicitation made on or after the effective date of this Act.

SECTION 11. (a) Except as provided by this section, Section 4102.104, Insurance Code, as amended by this Act, applies only to payment accepted on or after the effective date of this Act.

(b) Payment for a service performed before the effective date of this Act or performed after the effective date of this Act under a contract entered into before the effective date of this Act is governed by the law as it existed immediately before the effective date of this Act, and that law is continued in effect for that purpose.

SECTION 12. Section 4102.160, Insurance Code, as amended by this Act, and Section 4102.164, Insurance Code, as added by this Act, apply only to a referral made on or after the effective date of this Act. A referral made before the effective date of this Act is governed by the law as it existed immediately before the effective date of this Act, and that law is continued in effect for that purpose.

SECTION 13. The changes in law made by this Act apply only to an offense committed on or after the effective date of this Act. An offense committed before the effective date of this Act is governed by the law in effect when the offense was committed, and the former law is continued in effect for that purpose. For purposes of this section, an offense was committed before the effective date of this Act if any element of the offense occurred before that date.

SECTION 14. This Act takes effect September 1, 2015.

Passed the Senate on May 14, 2015: Yeas 31, Nays 0; passed the House on May 27, 2015: Yeas 144, Nays 0, two present not voting.

Approved June 19, 2015.

Effective September 1, 2015.